

COMMITTEE REPORT

MR. PRESIDENT:

The Senate Committee on Commerce and Consumer Affairs, to which was referred House Bill No. 1222, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- 1 Delete the title and insert the following:
- 2 A BILL FOR AN ACT to amend the Indiana Code concerning
- 3 consumer sales and credit and to make an appropriation.
- 4 Page 1, delete lines 1 through 17, begin a new paragraph and insert:
- 5 "SECTION 1. IC 24-4.7 IS ADDED TO THE INDIANA CODE AS
- 6 A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,
- 7 2001]:
- 8 **ARTICLE 4.7. TELEPHONE SOLICITATION OF**
- 9 **CONSUMERS**
- 10 **Chapter 1. General Provisions**
- 11 **Sec. 1. This article does not apply to any of the following:**
- 12 **(1) A telephone call made in response to an express request of**
- 13 **the person called.**
- 14 **(2) A telephone call made primarily in connection with an**
- 15 **existing debt or contract for which payment or performance**
- 16 **has not been completed at the time of the call.**
- 17 **(3) A telephone call made on behalf of a charitable**
- 18 **organization that is exempt from federal income taxation**
- 19 **under Section 501 of the Internal Revenue Code, but only if**
- 20 **all of the following apply:**
- 21 **(A) The telephone call is made by a volunteer or an**

- 1 employee of the charitable organization.
- 2 **(B) The telephone solicitor who makes the telephone call**
- 3 **immediately discloses all of the following information upon**
- 4 **making contact with the consumer:**
- 5 **(i) The solicitor's true first and last name.**
- 6 **(ii) The name, address, and telephone number of the**
- 7 **charitable organization.**
- 8 **(4) A telephone call made by an individual licensed under**
- 9 **IC 25-34.1 if:**
- 10 **(A) the sale of goods or services is not completed; and**
- 11 **(B) the payment or authorization of payment is not**
- 12 **required;**
- 13 **until after a face to face sales presentation by the seller.**
- 14 **(5) A telephone call made by an individual licensed under**
- 15 **IC 27-1-15.5 when the individual is soliciting an application**
- 16 **for insurance or negotiating a policy of insurance on behalf of**
- 17 **an insurer (as defined in IC 27-1-2-3).**
- 18 **(6) A telephone call soliciting the sale of a newspaper of**
- 19 **general circulation.**
- 20 **Sec. 2. This article does not relieve a person from complying**
- 21 **with any other applicable law.**
- 22 **Chapter 2. Definitions**
- 23 **Sec. 1. The definitions in this chapter apply throughout this**
- 24 **article.**
- 25 **Sec. 2. "Consumer" means a residential telephone subscriber**
- 26 **who is an actual or a prospective:**
- 27 **(1) purchaser, lessee, or recipient of consumer goods or**
- 28 **services; or**
- 29 **(2) donor to a charitable organization.**
- 30 **Sec. 3. "Consumer goods or services" means any of the**
- 31 **following:**
- 32 **(1) Tangible or intangible personal property or real property**
- 33 **that is normally used for personal, family, or household**
- 34 **purposes.**
- 35 **(2) Property intended to be attached to or installed on real**
- 36 **property without regard to whether it is attached or installed.**
- 37 **(3) Services related to property described in subdivision (1) or**
- 38 **(2).**
- 39 **(4) Credit cards or the extension of credit.**
- 40 **Sec. 4. "Division" refers to the consumer protection division of**
- 41 **the office of the attorney general.**
- 42 **Sec. 5. "Doing business in Indiana" means making telephone**

1 sales calls to consumers located in Indiana whether the telephone
2 sales calls are made from a location in Indiana or outside Indiana.

3 Sec. 6. "Fund" refers to the consumer protection division
4 telephone solicitation fund established by IC 24-4.7-3-6.

5 Sec. 7. "Listing" refers to the no telephone sales solicitation
6 listing published by the division under IC 24-4.7-3 that lists the
7 names of persons who do not wish to receive telephone sales calls.

8 Sec. 8. "Telephone number" means a residential telephone
9 number.

10 Sec. 9. "Telephone sales call" means a telephone call made to a
11 consumer for any of the following purposes:

12 (1) Solicitation of a sale of consumer goods or services.

13 (2) Solicitation of a charitable contribution.

14 (3) Obtaining information that will or may be used for the
15 direct solicitation of a sale of consumer goods or services or
16 an extension of credit for such purposes.

17 The term includes a call made by use of automated dialing or
18 recorded message devices.

19 Sec. 10. "Telephone solicitor" means an individual, a firm, an
20 organization, a partnership, an association, or a corporation,
21 including affiliates and subsidiaries, doing business in Indiana.

22 Chapter 3. Duties of the Division

23 Sec. 1. (a) A quarterly listing of telephone numbers of Indiana
24 consumers who request not to be solicited by telephone shall be
25 established, maintained, and published as provided in this section.

26 (b) The telephone number of a consumer shall be placed on the
27 listing if the consumer requests to be added to the listing according
28 to a procedure approved by the division.

29 (c) The listing shall be updated upon receipt of a request from
30 a consumer.

31 (d) A telephone solicitor may obtain a copy of the listing upon
32 request of the telephone solicitor as provided in this section.

33 (e) The division shall establish a fee to be paid by a telephone
34 solicitor for obtaining a copy of the listing. The fee established
35 under this subsection may not exceed the amount necessary to
36 cover the cost of providing the listing to telephone solicitors.

37 Sec. 2. (a) The division may contract with an agent to perform
38 the division's duties under section 1 of this chapter if both of the
39 following conditions are satisfied:

40 (1) The agent has demonstrated experience in maintaining a
41 national no sales solicitation calls listing.

42 (2) The contract requires the vendor to provide the listing in:

- 1 (A) a printed hard copy format; and
- 2 (B) any other format offered;
- 3 at a cost that does not exceed the production cost of the
- 4 format offered.

5 (b) If the division enters into a contract under this section, the
6 division must retain the ultimate authority for the following:

- 7 (1) Approval of the procedures for establishment,
- 8 maintenance, and publication of the listing.
- 9 (2) Establishing fees required by section 1(e) of this chapter.

10 Sec. 3. The division shall investigate complaints received
11 concerning violations of this article.

12 Sec. 4. The division shall notify Indiana residents of the rights
13 and duties created by this article.

14 Sec. 5. (a) The division shall, after June 30 and before October
15 1 of each year, report to the regulatory flexibility committee
16 established by IC 8-1-2.6-4 on the following:

- 17 (1) For the state fiscal year ending June 30, 2002, the expenses
- 18 incurred by the division in establishing the listing.
- 19 (2) The total amount of fees deposited in the fund during the
- 20 most recent state fiscal year.
- 21 (3) The expenses incurred by the division in maintaining and
- 22 promoting the listing during the most recent state fiscal year.
- 23 (4) The projected budget required by the division to comply
- 24 with this article during the current state fiscal year.
- 25 (5) Any other expenses incurred by the division in complying
- 26 with this article during the most recent state fiscal year.
- 27 (6) The total number of subscribers on the listing at the end of
- 28 the most recent state fiscal year.
- 29 (7) The number of new subscribers added to the listing during
- 30 the most recent state fiscal year.
- 31 (8) The number of subscribers removed from the listing for
- 32 any reason during the most recent state fiscal year.

33 (b) The regulatory flexibility committee shall, before November
34 1 of each year, issue a report and recommendations to the
35 legislative council concerning the information received under
36 subsection (a).

37 Sec. 6. (a) The consumer protection division telephone
38 solicitation fund is established for the purpose of the
39 administration of this article and shall be used exclusively for this
40 purpose.

41 (b) The division shall administer the fund.

42 (c) The division shall deposit all revenue received under this

1 article in the fund.

2 (d) Money in the fund is continuously appropriated to the
3 division for the administration of this article.

4 (e) Money in the fund at the end of a state fiscal year does not
5 revert to the state general fund. However, if the amount of money
6 in the fund at the end of a particular state fiscal year exceeds two
7 hundred thousand dollars (\$200,000), the treasurer of state shall
8 transfer the excess from the fund to the state general fund.

9 Sec. 7. The division may adopt rules under IC 4-22-2 to
10 implement this article.

11 Chapter 4. Telephone Solicitations

12 Sec. 1. A telephone solicitor may not make or cause to be made
13 a telephone sales call to a telephone number if that telephone
14 number appears in the most current quarterly listing published by
15 the division.

16 Sec. 2. A telephone solicitor who makes a telephone sales call to
17 a telephone number shall immediately disclose the following
18 information upon making contact with the consumer:

- 19 (1) The solicitor's true first and last name.
- 20 (2) The name of the business on whose behalf the telephone
21 solicitor is soliciting.

22 Sec. 3. (a) This section does not apply to a person obtaining
23 consumer information for inclusion in directory assistance and
24 telephone directories sold by telephone companies.

25 (b) A telephone solicitor or person who obtains consumer
26 information that includes telephone numbers shall exclude the
27 telephone numbers that appear on the division's most current
28 listing.

29 Sec. 4. (a) This section does not apply to any of the following:

- 30 (1) A sale in which:
 - 31 (A) no prior payment is made to a merchant;
 - 32 (B) an invoice accompanies the goods or services; and
 - 33 (C) a consumer is allowed seven (7) days to cancel the
34 services or return the goods without obligation for
35 payment.
- 36 (2) A contractual agreement that:
 - 37 (A) requires payment; and
 - 38 (B) allows the consumer at least ten (10) days to cancel the
39 contract and receive a full refund of the payment.
- 40 (3) A sale regulated by 170 IAC 7-1.1-19.
- 41 (4) A newspaper subscription executed through a telephone
42 call.

(b) A contract made under a telephone sales call is not valid and enforceable against a consumer unless the contract complies with this section.

(c) A contract made under a telephone sales call must satisfy all of the following:

(1) The contract must be reduced to writing and signed by the consumer.

(2) The contract must comply with all other applicable laws.

(3) The contract must contain the name, address, and business telephone number of the seller, the total price of the contract, and a detailed description of the goods or services being sold.

(4) The description of goods or services as stated in the contract must be the same as the description principally used in the telephone solicitation.

(5) The contract must contain, in bold, conspicuous type immediately preceding the signature the words "you are not obligated to pay any money unless you sign this contract and return it to the seller".

(6) The contract may not exclude from its terms any oral or written representations made by the telephone solicitor to the consumer in connection with the transaction.

Sec. 5. (a) This section does not apply to any of the following:

(1) A transaction made in accordance with prior negotiations in the course of a visit by a consumer to a merchant that operates a retail business establishment that has a fixed, permanent location where consumer goods are displayed or offered for sale on a continuing basis.

(2) A transaction in which:

(A) a consumer may obtain a full refund for the return of undamaged and unused goods; or

(B) a consumer may, within seven (7) days after receipt of merchandise by a consumer, give a cancellation of services notice to a seller and return the merchandise, and the seller must process the refund within thirty (30) days after receipt of the returned merchandise.

(3) A transaction in which a consumer purchases goods or services under a television, radio, or print advertisement or a sample, brochure, or catalog of a merchant that contains:

(A) the name, address, and business telephone number of the merchant;

(B) a description of the goods or services being sold; and

(C) limitations or restrictions that apply to the offer.

(4) A transaction in which a merchant is a bona fide charitable organization.

(b) A contract made under a telephone sales call in violation of this section is not valid and enforceable against a consumer.

(c) A merchant who engages a telephone solicitor to make or cause to be made a telephone sales call may not:

(1) make or submit a charge to a consumer's credit card account; or

(2) make or cause to be made any electronic transfer of funds; until the merchant receives from the consumer a copy of the contract, signed by the consumer, that complies with this chapter.

Sec. 6. A telephone solicitor must also comply with the following, if applicable:

(1) IC 24-5-12.

(2) IC 24-5-14.

Chapter 5. Civil Remedies

Sec. 1. A telephone solicitor who fails to comply with any provision of IC 24-4.7-4 commits a deceptive act that is actionable by the attorney general under this chapter.

Sec. 2. In an action under this chapter, the attorney general may obtain any or all of the following:

(1) An injunction to enjoin future violations of IC 24-4.7-4.

(2) A civil penalty of not more than twenty-five thousand dollars (\$25,000) for each violation of IC 24-4.7-4. For purposes of this subdivision, each telephone call in violation of IC 24-4.7-4-1 is considered a separate violation.

(3) All money the defendant obtained through violation of IC 24-4.7-4.

(4) The attorney general's reasonable costs in:

(A) the investigation of the deceptive act; and

(B) maintaining the action.

(5) Reasonable attorney's fees.

(6) Costs of the action.

Sec. 3. In an action under this chapter, the court may void or limit the application of contracts or clauses resulting from deceptive acts and order restitution to be paid to an aggrieved consumer.

Sec. 4. An action brought under this chapter may not be brought more than two (2) years after the occurrence of the deceptive act.

Sec. 5. An action under this chapter may be brought in the circuit or superior court of Marion County.

Sec. 6. The attorney general may employ counsel to represent

- 1 **the state in an action under this chapter."**
- 2 Delete pages 2 through 6
- 3 Page 7, delete lines 1 through 39.
- 4 Renumber all SECTIONS consecutively.
(Reference is to HB 1222 as reprinted February 6, 2001.)

and when so amended that said bill do pass .

Committee Vote: Yeas 10, Nays 0.

Senator Server, Chairperson